

AMENDED IN SENATE APRIL 24, 2000

AMENDED IN SENATE APRIL 3, 2000

## SENATE BILL

No. 1940

### Introduced by Senator Bowen

February 24, 2000

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~~An act to add Article 7.5 (commencing with Section 4125) to Chapter 9 of the Business and Professions Code, relating to dangerous drugs. An act to add Section 56.11.1 to the Civil Code, relating to medical records.~~

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1940, as amended, Bowen. ~~Dangerous drugs: disclosure of consumer information~~ *Medical information: authorization: pharmacists.*

~~The Pharmacy Law regulates the furnishing, sale, and dispensing of dangerous drugs and, when no other penalty is provided, makes a knowing violation of its provisions punishable as a misdemeanor, and makes a violation of its provisions not knowingly committed punishable as an infraction.~~

~~This bill would add provisions, the Pharmacy Records Privacy Act, to the Pharmacy Law, making it unlawful for designated persons or entities to collect, use, or disclose medical information regarding a consumer, including that information obtained through the Internet or a mail order transaction, for marketing, promotional, or other commercial purposes without a valid written consent from the consumer. This bill would require that the consent be on a form separate~~

~~from any other consent or authorization for the release of information relating to the consumer and meet other specified criteria with respect to its contents.~~

~~Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating a new crime.~~

*Existing law prohibits a provider of health care, a health care service plan, or a contractor from intentionally sharing, selling, or otherwise using any medical information for any purpose not necessary to provide health care services to the patient, except upon authorization by the patient, enrollee, or subscriber or except as otherwise provided by law. Existing law also prescribes requirements for the form and contents of that authorization. A violation of these provisions that results in economic loss or personal injury to a patient is punishable as a misdemeanor. In addition, existing law imposes civil penalties and fines and authorizes an individual to recover damages for a violation of these provisions, as specified.*

*This bill would prohibit a person or entity that is licensed, regulated, or certified by the Board of Pharmacy, as specified, from intentionally sharing, selling, or otherwise using any medical information regarding a consumer for marketing or promotional purposes without obtaining a valid prior written consent from the consumer that both complies with the requirements of existing law and with certain additional requirements. Since a violation of this provision that results in economic loss or personal injury to a patient would be a misdemeanor, the bill would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

~~SECTION 1. Article 7.5 (commencing with Section~~

*SECTION 1. Section 56.11.1 is added to the Civil Code, to read:*

*56.11.1. (a) Notwithstanding any other provision of this chapter, no person or entity that is licensed, regulated, or certified by the Board of Pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code shall intentionally share, sell, or otherwise use any medical information regarding a consumer for marketing or promotional purposes without obtaining a valid, prior written consent from the consumer.*

*(b) A written consent required by this section shall be considered valid only if it complies with the requirements of Section 56.11 and it meets both of the following requirements:*

*(1) The consent is on a form separate from any other consent form or authorization for the release of medical information relating to the consumer.*

*(2) The consent form contains boxes for the consumer to check "Yes" to provide consent or "No" to withhold consent.*

*(c) Internet and mail order based persons or entities may obtain the consent electronically provided the person or entity obtains electronic verification from the consumer in lieu of a signature.*

*SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

~~4125) is added to Chapter 9 of Division 2 of the Business and Professions Code, to read:~~

1           ~~Article 7.5. Pharmacy Records Privacy Act~~

2  
3       ~~4125. This article shall be known as and may be cited~~  
4 ~~as the Pharmacy Records Privacy Act.~~

5       ~~4126. The provisions of this article shall apply to the~~  
6 ~~following persons and entities:~~

7       ~~(a) Pharmacies.~~

8       ~~(b) Pharmacy corporations, as defined in Section 4150.~~

9       ~~(c) Pharmacists licensed by the board.~~

10       ~~(d) Manufacturers.~~

11       ~~(e) Wholesalers.~~

12       ~~(f) Sales or distribution outlets licensed by the board~~  
13 ~~as a wholesaler, as described in subdivision (b) of Section~~  
14 ~~4160.~~

15       ~~(g) Nonresident pharmacies, as described in~~  
16 ~~subdivision (a) of Section 4112.~~

17       ~~(h) Out-of-state manufacturers and wholesalers~~  
18 ~~holding an out-of-state drug distributor's license, as~~  
19 ~~described in subdivision (a) of Section 4161.~~

20       ~~(i) Principals and agents of any out-of-state~~  
21 ~~manufacturer, wholesaler, or pharmacy who are~~  
22 ~~registered with the board as described in subdivision (a)~~  
23 ~~of Section 4162.~~

24       ~~4127. (a) It shall be unlawful for any person or entity~~  
25 ~~subject to this article to collect, use, or disclose medical~~  
26 ~~information regarding a consumer for marketing,~~  
27 ~~promotional, or other commercial purposes without a~~  
28 ~~valid written consent from the consumer.~~

29       ~~(b) A written consent required by this section shall be~~  
30 ~~valid if it is on a form separate from any other consent or~~  
31 ~~authorization for the release of information relating to~~  
32 ~~the consumer, including any authorization under Section~~  
33 ~~56.11 of the Civil Code; solely requests the consumer's~~  
34 ~~consent to collect, use, or disclose medical information~~  
35 ~~regarding the consumer for marketing, promotional, or~~  
36 ~~other commercial purposes; and meets all of the following~~  
37 ~~requirements:~~

38       ~~(1) It is handwritten by the person who signs it or is in~~  
39 ~~typeface no smaller than eight-point type.~~

1 ~~(2) It contains a signature that serves no other purpose~~  
2 ~~than to execute the consent.~~

3 ~~(3) It is signed and dated by one of the following:~~

4 ~~(A) The consumer. A consumer who is a minor may~~  
5 ~~only sign a consent pursuant to this section if at the time~~  
6 ~~he or she could lawfully consent under Chapter 3~~  
7 ~~(commencing with Section 6920) of Part 4 of, or Part 6~~  
8 ~~(commencing with Section 7000) of, Division 11 of the~~  
9 ~~Family Code.~~

10 ~~(B) The legal representative of the consumer, if the~~  
11 ~~consumer is an incompetent or is a minor who at the time~~  
12 ~~could not lawfully consent pursuant to subparagraph (A).~~

13 ~~(C) The beneficiary or personal representative of a~~  
14 ~~deceased consumer.~~

15 ~~(4) It states the specific medical information that will~~  
16 ~~be collected, used, or disclosed.~~

17 ~~(5) It states the specific marketing, promotional, or~~  
18 ~~other commercial purposes for which the medical~~  
19 ~~information is collected, used, or disclosed.~~

20 ~~(6) It states the names of all persons and entities who~~  
21 ~~will collect, use, or disclose the medical information for~~  
22 ~~marketing, promotional, or other commercial purposes.~~

23 ~~(7) It states the names of all persons and entities to~~  
24 ~~whom the medical information will be disclosed for~~  
25 ~~marketing, promotional, or other commercial purposes.~~

26 ~~(8) It states a specific date after which the consent is~~  
27 ~~no longer valid.~~

28 ~~(9) It advises the person signing the consent of the~~  
29 ~~right to receive a copy of it.~~

30 ~~(e) A written consent may be obtained by electronic~~  
31 ~~mail or other electronic means if it meets all of the~~  
32 ~~requirements of subdivision (b).~~

33 ~~(d) Upon the request of the consumer, or the person~~  
34 ~~who signed the consent, a copy of the consent shall be~~  
35 ~~provided to him or her.~~

36 ~~(e) This section includes medical information~~  
37 ~~regarding a consumer that any person or entity obtained~~  
38 ~~through the Internet or through a mail order transaction~~  
39 ~~with the consumer.~~

1     ~~4128. For purposes of this article, the following~~  
2 ~~definitions shall apply:~~

3     ~~(a) “Consumer” means any natural person.~~

4     ~~(b) “Internet” has the meaning set forth in paragraph~~  
5 ~~(6) of subdivision (e) of Section 17538.~~

6     ~~(c) “Medical information” means any individually~~  
7 ~~identifiable information, in electronic or physical form,~~  
8 ~~regarding a consumer’s medical history, mental or~~  
9 ~~physical condition, or treatment, including drugs that~~  
10 ~~have been prescribed, sold, dispensed, or furnished to the~~  
11 ~~consumer or about which the consumer has inquired.~~  
12 ~~“Individually identifiable” means that the medical~~  
13 ~~information includes or contains any element of personal~~  
14 ~~identifying information sufficient to allow identification~~  
15 ~~of the consumer, such as the consumer’s name, address,~~  
16 ~~electronic mail address, telephone number, or social~~  
17 ~~security number, or other information that, alone or in~~  
18 ~~combination with other publicly available information,~~  
19 ~~reveals the consumer’s identity.~~

20     ~~SEC. 2. No reimbursement is required by this act~~  
21 ~~pursuant to Section 6 of Article XIII B of the California~~  
22 ~~Constitution because the only costs that may be incurred~~  
23 ~~by a local agency or school district will be incurred~~  
24 ~~because this act creates a new crime or infraction,~~  
25 ~~eliminates a crime or infraction, or changes the penalty~~  
26 ~~for a crime or infraction, within the meaning of Section~~  
27 ~~17556 of the Government Code, or changes the definition~~  
28 ~~of a crime within the meaning of Section 6 of Article~~  
29 ~~XIII B of the California Constitution.~~